

STATE OF MICHIGAN  
COURT OF APPEALS

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BONNIE ANN FORTIN,

Plaintiff-Appellant,

v

JOSEPH A. FORTIN, JR.,

Defendant-Appellee.

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UNPUBLISHED

September 24, 2009

No. 282845

Macomb Circuit Court

LC No. 96-002512-DM

Before: Davis, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted from the trial court's orders denying her request for attorney fees and granting defendant's request for attorney fees. We affirm.

The parties entered into a consent judgment of divorce in 1997. In 2001, the parties entered into a stipulation regarding an increase in child support. In 2005, plaintiff sought a review of the support order, arguing that a change in circumstances required an increase. However, plaintiff also filed a parental cooperation motion wherein it was alleged that defendant was disrespectful to plaintiff and did not apologize. Plaintiff's counsel filed another motion asserting that prior child support orders had been improperly calculated. The matters were referred to the friend of the court referee. Ultimately, the referee denied the most recent request for an increase in child support, concluded that prior support orders were proper, outlined the motions filed in a one-year period that required a response by defendant, and concluded that plaintiff should pay defendant \$5,000 in attorney fees for the harassing filings. Following objections, the family court judge adopted the recommendations of the friend of the court referee.

Plaintiff first alleges that the trial court abused its discretion by failing to award plaintiff attorney fees in response to defendant's motion for change of custody. We disagree. The trial court's decision regarding the grant or denial of attorney fees is reviewed for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). "Any findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error, but questions of law are reviewed de novo." *Id.* (Citations omitted.) An abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

We cannot conclude that the trial court's denial of this request constituted an abuse of discretion. Although plaintiff asserted that she did not receive sufficient support to meet her own needs and the needs of the children, in 2005, plaintiff's income coupled with the child support was in excess of \$39,000. Under the circumstances, we cannot conclude that the trial court abused its discretion in failing to award attorney fees to respond to a motion filed by the defense.

Plaintiff next asserts that the trial court abused its discretion by failing to award attorney fees regarding her motion to increase child support and the litigation regarding defendant's behavior. We disagree. MCR 3.206(C)(2)(a) provides that a party seeking attorney fees and expenses must allege sufficient facts to show that the requesting party is unable to bear the expense of the action and that the other party is able to pay. In the present case, plaintiff's income and support was in excess of \$39,000. Plaintiff was represented by counsel with whom she had a prior relationship. At the time of the retainer, counsel was aware of plaintiff's financial circumstances. The friend of the court concluded, and the trial court agreed, that the attorney fees were incurred as a result of harassing motions and a shifting of attorney fees was not permissible as a result of that activity. Based on these factual findings, we cannot conclude that the decision was an abuse of discretion. *Reed, supra*.

Next, it is alleged that the trial court failed to follow proper procedure when it did not conduct de novo hearings and allow the parties to present evidence. We disagree. The question of whether the trial court failed to grant the parties a de novo hearing is reviewed for clear legal error. *Crampton v Crampton*, 178 Mich App 362, 363; 443 NW2d 419 (1989). MCL 552.507(4) requires the court to hold a de novo hearing upon the objection of any party to a referee report. However, review of the record reveals that the parties appeared before the family court during its first week of its assignment. The family court judge adjourned the hearing to review the file. When the parties returned for the scheduled hearing, the family court made inquiry of the parties. At that time, plaintiff's counsel stated that he was relying on the motion filed. Plaintiff's counsel never sought to call witnesses or present evidence. Accordingly, this challenge is without merit.

Lastly, plaintiff alleges that the trial court abused its discretion by awarding defendant \$5,000 in attorney fees. We disagree. An award of attorney fees is authorized when the party requesting payment has been forced to incur them as a result of the other party's unreasonable conduct in the course of litigation. *Stackhouse v Stackhouse*, 193 Mich App 437, 445; 484 NW2d 723 (1992). In the present case, the trial court found that harassing motions were filed. The friend of the court referee delineated the extensive filings by plaintiff's counsel. Although plaintiff asserted that it was necessary to file parental cooperation motions, it was noted that defendant apologized for the comment, but the issue was nonetheless submitted before the friend of the court referee and the trial judge. In light of the record presented, we cannot conclude that the trial court abused its discretion. *Reed, supra*.

Affirmed.

/s/ Alton T. Davis  
/s/ William B. Murphy  
/s/ Karen M. Fort Hood